

Bill Campbell QC  
General Counsel (International Law)  
Office of International Law  
Ph: (02) 6141 3365  
Fax: (02) 6141 3486

**Mason, Timothy**

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**From:** Campbell, Bill  
**Sent:** Thursday, 27 October 2011 9:59 AM  
**To:** Bird, Gillian; renee.leon@pmc.gov.au; 'Ramzi Jabbour@afp.gov.au'; Whelan, John, Clifton, Jacob; Sheehan, Tony, Fredericks, David; greg.french@dfat.gov.au; dominic.trindade@dfat.gov.au; Reid, John; Coles, Anthony, Inverarity, Tara; Ng, Phillip; Daley, Simon (AGS); jeff.cranston@ags.gov.au

**Subject:** [REDACTED]  
**Attachments:** [REDACTED]

**Security Classification:**

~~LEGAL-IN-CONFIDENCE~~

S33(a)(iii)

~~LEGAL-IN-CONFIDENCE~~

Dear all

S33(a)(iii)

[REDACTED]

Regards

Bill

*Bill Campbell QC  
General Counsel (International Law)  
Office of International Law  
Ph: (02) 6141 3365  
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REDACTED

**Mason, Timothy**

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**From:** Ananijevski, Branko  
**Sent:** Thursday, 27 October 2011 3:20 PM  
**To:** Ng, Phillip  
**Subject:** RE: QTB #9 - Allegations of Sri Lankan war crimes DOC [SEC=IN-CONFIDENCE]

**Security Classification:**  
~~IN-CONFIDENCE~~

**~~IN-CONFIDENCE~~**

Thanks very much Phil. Tara isn't in tomorrow and will probably be out by the time you send it, but I can amalgamate any changes you have with any she suggests.

Cheers  
Branko

**From:** Ng, Phillip  
**Sent:** Thursday, 27 October 2011 3:19 PM  
**To:** Ananijevski, Branko  
**Subject:** RE: QTB #9 - Allegations of Sri Lankan war crimes.DOC [SEC=IN-CONFIDENCE]

**~~IN-CONFIDENCE~~**

Hi Branko

Thanks - I will have a chance to have a look at it late this afternoon (probably after 5 pm) and will then get my comments back to you ASAP.

Phil

**From:** Ananijevski, Branko  
**Sent:** Thursday, 27 October 2011 3:14 PM  
**To:** Ng, Phillip  
**Subject:** QTB #9 - Allegations of Sri Lankan war crimes.DOC

**~~IN-CONFIDENCE~~**

Hi Phillip

We have been asked to do a QTB on the Sri Lankan war crimes allegations, and are forwarding you a draft for your comment. Tara hasn't cleared this yet – I thought I'd send it your way first so she doesn't have to clear it twice.

This one is due at 10am tomorrow. Will you have a chance to look at this today? Sorry for the timing, let me know if this is an issue.

Thanks in advance!

Branko

**Branko Ananijevski**  
Legal Officer

Criminal Law Reform Section  
Criminal Law & Law Enforcement Branch  
Attorney-General's Department  
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T: 02 6141 3108 | E: [branko.ananijevski@ag.gov.au](mailto:branko.ananijevski@ag.gov.au) | W: [www.ag.gov.au](http://www.ag.gov.au)

REDACTED

**Mason, Timothy**

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**From:** Ng, Phillip  
**Sent:** Thursday, 27 October 2011 6:00 PM  
**To:** Ananijevski, Branko  
**Cc:** Reid, John  
**Subject:** RE: QTB #9 - Allegations of Sri Lankan war crimes.DOC ~~{SEC=IN-CONFIDENCE}~~  
**Attachments:** QTB #9 - Allegations of Sri Lankan war crimes (OIL comments).doc

**Security Classification:**  
~~IN-CONFIDENCE~~

**~~IN-CONFIDENCE~~**

Branko,

Thanks for your email. Please see attached the QTB marked to show OIL's suggested amendments.

If you would like to discuss please feel free to telephone me on x 3254.

Kind regards

**Phillip Ng**  
Legal Officer  
Office of International Law  
Attorney-General's Department

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**From:** Ananijevski, Branko  
**Sent:** Thursday, 27 October 2011 3:14 PM  
**To:** Ng, Phillip  
**Subject:** QTB #9 - Allegations of Sri Lankan war crimes.DOC

**~~IN-CONFIDENCE~~**

Hi Phillip

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Branko

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**Mason, Timothy**

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**From:** Ananijevski, Branko  
**Sent:** Friday, 28 October 2011 8:34 AM  
**To:** Ng, Phillip  
**Subject:** RE: QTB #9 - Allegations of Sri Lankan war crimes DOC [SEC=IN-CONFIDENCE]

**Security Classification:**  
IN-CONFIDENCE

**IN-CONFIDENCE**

Thanks Phillip, much appreciated

Regards  
Branko

**From:** Ng, Phillip  
**Sent:** Thursday, 27 October 2011 6:00 PM  
**To:** Ananijevski, Branko  
**Cc:** Reid, John  
**Subject:** RE: QTB #9 - Allegations of Sri Lankan war crimes.DOC [SEC=IN-CONFIDENCE]

**IN-CONFIDENCE**

Branko,

Thanks for your email. Please see attached the QTB marked to show OIL's suggested amendments.

If you would like to discuss please feel free to telephone me on x 3254

Kind regards

**Phillip Ng**  
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**From:** Ananijevski, Branko  
**Sent:** Thursday, 27 October 2011 3:14 PM  
**To:** Ng, Phillip  
**Subject:** QTB #9 - Allegations of Sri Lankan war crimes.DOC

**IN-CONFIDENCE**

Hi Phillip

We have been asked to do a QTB on the Sri Lankan war crimes allegations, and are forwarding you a draft for your comment. Tara hasn't cleared this yet – I thought I'd send it your way first so she doesn't have to clear it twice.

This one is due at 10am tomorrow. Will you have a chance to look at this today? Sorry for the timing, let me know if this is an issue.

Thanks in advance!

Branko

**Branko Ananijevski**

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REDACTED

**Ng, Phillip**

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**From:** Reid, John  
**Sent:** Friday, 28 October 2011 10:40 AM  
**To:** Coles, Anthony, Inverarity, Tara  
**Cc:** Campbell, Bill; Reimers, Katherine; Ng, Phillip  
**Subject:** Sri Lanka [SEC=UNCLASSIFIED]

**Importance:** High

**UNCLASSIFIED**

Anthony / Tara,

I've just had a call from Jacob about the Sri Lanka matter. It appears that the AG is likely to be asked questions about the Sri Lankan proceedings in caucus on Monday morning. Jacob would like some TPs done (in the form of 5 or 6 dot points in an email) by 1pm for inclusion in the AG's weekend pack.

I think the work has been done on this (in terms of the QTB and sub), so shouldn't be too taxing. Are you guys able to draw the material into a short email for Jacob? If you don't have the capacity this morning, if it would be helpful, I can have someone here draw together the lines.

Cheers,  
JR

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**John Reid**

Assistant Secretary  
International Law, Trade and Security Branch  
Office of International Law  
Attorney-General's Department

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M: [REDACTED] S47F(1)

E: [john.reid@ag.gov.au](mailto:john.reid@ag.gov.au)

**Mason, Timothy**

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**From:** Coles, Anthony  
**Sent:** Friday, 28 October 2011 11:17 AM  
**To:** Reid, John; Inverarity, Tara; Winter, Josephine  
**Cc:** Ng, Phillip; Reimers, Katherine  
**Subject:** RE Sri Lanka [SEC=UNCLASSIFIED]

**Security Classification:**  
UNCLASSIFIED

**UNCLASSIFIED**

John – OK with us. Thanks for your help.

Anthony Coles  
A/g First Assistant Secretary  
Criminal Justice Division  
02 6141 2770

**From:** Reid, John  
**Sent:** Friday, 28 October 2011 10:57 AM  
**To:** Coles, Anthony; Inverarity, Tara; Winter, Josephine  
**Cc:** Ng, Phillip; Reimers, Katherine  
**Subject:** Sri Lanka [SEC=UNCLASSIFIED]

**UNCLASSIFIED**

Anthony,  
As discussed, some DRAFT TPs and background for Jacob. Do you want to look over? I've drawn them from the QTB.

Cheers,  
JR

Jacob,  
As requested, some TP's on the Sri Lankan matter from this week.

**Talking points**

- On Thursday 20 October, the Magistrates' Court of Victoria issued a charge sheet and summons for the Sri Lankan President Mahinda Rajapaksa, relating to charges of war crimes and crimes against humanity under the Commonwealth Criminal Code.
- I became aware of this matter on Monday 24 October.
- Under the Criminal Code, the relevant charges can only proceed with my consent and must be prosecuted in my name. For that reason, on 24 October 2011, the complainant's solicitors sought my consent.
- On 25 October I refused my consent.
- Under the *Foreign States Immunities Act 1985*, President Rajapaksa as a foreign Head of State possesses immunity from any criminal proceedings.

- Additionally, President Rajapaksa cannot legally be arrested, detained or served with court proceedings either by a Government agency or a private individual while in Australia.
- I have refused to grant my consent to the proceedings, as continuation of the proceedings would be in breach of Australia's international obligations and domestic law.

### Background

On 20 October 2011, Mr Arunachalam Jegatheeswaran, a Sri Lankan born Australian citizen, filed charges against Sri Lankan President Mahinda Rajapaksa in the Magistrates' Court of Victoria for war crimes and crimes against humanity allegedly committed in contravention of the *Criminal Code Act 1995* (Cth). The issue became public on 24 October 2011, when it was reported on the ABC's Lateline, and has since received ongoing media coverage.

The Criminal Code states that proceedings for these offences must not be commenced without the Attorney General's consent and may only be prosecuted in the Attorney General's name. On 24 October 2011, Robert Stary Lawyers, on behalf of Mr Jegatheeswaran, wrote to you, requesting your consent and asking that you take carriage of the matter.

Under section 36(1) of the *Foreign States Immunities Act 1985* (Cth), President Rajapaksa as a foreign Head of State possesses those immunities which would attach to the head of a foreign mission under the Diplomatic Privileges and Immunities Act. This immunity relevantly includes statutory immunity from criminal proceedings and immunity from any form of arrest or detention. To continue proceedings against President Rajapaksa would therefore have breached his immunities as a matter of domestic law and likely have placed Australia in breach of its obligations under international law. You wrote back to Robert Stary Lawyers on 26 October 2011, refusing your consent to the commencement of the proceedings. On 27 October, the Secretary of the Department wrote to the Sri Lankan High Commissioner, informing them of your decision.

S42(1)

Cheers,  
John

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### John Reid

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M: [REDACTED] S47F(1)

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**Mason, Timothy**

---

**From:** Ananijevski, Branko  
**Sent:** Friday, 28 October 2011 1:25 PM  
**To:** Ng, Phillip  
**Cc:** Winter, Josephine  
**Subject:** RE: MHA QTB request ~~[SEC=IN-CONFIDENCE]~~

**Security Classification:**  
~~IN-CONFIDENCE~~

~~**IN-CONFIDENCE**~~

Thanks Phil!

**From:** Ng, Phillip  
**Sent:** Friday, 28 October 2011 1:24 PM  
**To:** Ananijevski, Branko  
**Subject:** FW: MHA QTB request ~~[SEC=IN-CONFIDENCE]~~

~~**IN-CONFIDENCE**~~

Hi Branko

FYI John agreed with the line (see email below)

Thanks

**Phillip Ng**  
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**From:** Reid, John  
**Sent:** Friday, 28 October 2011 1:23 PM  
**To:** Ng, Phillip  
**Subject:** FW: MHA QTB request ~~[SEC=IN-CONFIDENCE]~~

~~**IN-CONFIDENCE**~~

Thanks for this Phil – I agree with your conclusions.

Cheers,  
JR

**From:** Ng, Phillip  
**Sent:** Friday, 28 October 2011 1:14 pm

**To:** Ananijevski, Branko  
**Cc:** Reid, John  
**Subject:** RE: MHA QTB request [~~SEC=IN-CONFIDENCE~~]

**~~IN-CONFIDENCE~~**

Hi Branko

Thanks for your email.

As discussed, I do not have any concerns about including that additional line in the QTB.

I have not had an opportunity to discuss with John but will let you know ASAP if he has any concerns.

Kind regards

**Phillip Ng**  
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**From:** Ananijevski, Branko  
**Sent:** Friday, 28 October 2011 1:04 PM  
**To:** Ng, Phillip  
**Cc:** Reid, John  
**Subject:** MHA QTB request [~~SEC=IN-CONFIDENCE~~]  
**Importance:** High

**~~IN-CONFIDENCE~~**

Hi Phillip

We received a request from the MHAO to include a line in the QTB along the lines of "we encourage Sri Lanka to address allegations of war crimes and note that the UN has issued advice on this"

Would you have anything against us using this line from the DFAT PPQ circulated a few days ago:

Australia continues to call on Sri Lanka to ensure that its Lessons Learnt and Reconciliation Commission conducts a thorough investigation of the allegations made against members of both the Sri Lankan Government and the Liberation Tigers of Tamil Eelam.

Happy for you to add/subtract anything you consider appropriate.

They were after something fairly soon – apologies for the urgency and thanks in advance!

Cheers  
Branko

**Branko Ananijevski**  
Legal Officer



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irrelevant (draft)

REDACTED

**REDACTED**

Mason, Timothy

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**From:** Ananijevski, Branko  
**Sent:** Friday, 28 October 2011 2:52 PM  
**To:** Winter, Josephine  
**Subject:** FW: QTB Allegations of War Crimes by Sri Lankan Officials [SEC=IN-CONFIDENCE]  
**Attachments:** QTB 80823 - Allegations of War Crimes by Sri-Lankan officials - 27 October 2011 (2).doc

**Security Classification:** ~~IN-CONFIDENCE~~ Attachment removed as irrelevant (draft)

**~~IN-CONFIDENCE~~**

**From:** QTB  
**Sent:** Friday, 28 October 2011 2:36 PM  
**To:** Ananijevski, Branko  
**Subject:** FW: QTB Allegations of War Crimes by Sri Lankan Officials [SEC=IN-CONFIDENCE]

**~~IN-CONFIDENCE~~**

Hi Branko – please see below Can you review and incorporate whatever you believe is relevant into your current QTB? Cheers Simon Johnson

**From:** Ministerial [mailto:ministerial@afp.gov.au]  
**Sent:** Friday, 28 October 2011 2:28 PM  
**To:** QTB  
**Cc:** Ministerial; Grosse, Graeme  
**Subject:** FW: QTB Allegations of War Crimes by Sri Lankan Officials [SEC=IN-CONFIDENCE]

Hello QTB

I have been advised by Graeme Gross that this QTB rests with you Please see attached with can be incorporated as AFP Input

Cheers

Janine



**FEDERAL AGENT JANINE ENNISS**  
TEAM LEADER - MINISTERIAL  
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S47F(1)

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WARNING